

AMENDMENTS TO LB 1085

(Amendments to FA946)

1           1.     Strike original sections 2 to 10 and all amendments  
2 thereto and insert the following new sections:

3           "Section 1.     Section 77-2701.02,     Revised     Statutes  
4 Supplement, 2000, is amended to read:

5           77-2701.02.     Pursuant to section 77-2715.01:

6           (1)     Until     July 1, 1998, ~~or April 15, 1998, whichever is~~  
7 ~~later,~~ the rate of the sales tax levied pursuant to section 77-2703  
8 shall be five percent;

9           (2)     Commencing July 1, 1998, ~~or April 15, 1998, whichever~~  
10 ~~is later,~~ and until July 1, 1999, the rate of the sales tax     levied  
11 pursuant to section 77-2703 shall be four and one-half percent; ~~and~~

12           (3)     Commencing July 1, 1999, and until July 1, 2002, the  
13 rate of the sales tax levied pursuant to section 77-2703     shall     be  
14 five percent; and

15           (4) Commencing July 1, 2002, the rate of sales tax levied  
16 pursuant to section 77-2703 shall be four and three-fourths  
17 percent.

18           Sec. 2.     Section 77-2702.07, Revised Statutes Supplement,  
19 2000, is amended to read:

20           77-2702.07.     (1) Gross receipts shall mean the total  
21 amount of the sale or lease or rental price, as the case may be, of  
22 the retail sales of retailers valued in money whether received in  
23 money or otherwise, without any deduction on account of any of the

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1 following:

2 (a) The cost of property sold. In accordance with rules  
3 and regulations adopted and promulgated by the Tax Commissioner, a  
4 deduction may be taken if the retailer has purchased property for  
5 some purpose other than resale, has reimbursed his or her vendor  
6 for tax which the vendor is required to pay to the state or has  
7 paid the use tax with respect to the property, and has resold the  
8 property prior to making any use of the property other than  
9 retention, demonstration, or display while holding it for sale in  
10 the regular course of business. If such a deduction is taken by  
11 the retailer, no refund or credit will be allowed to his or her  
12 vendor with respect to the sale of the property;

13 (b) The cost of the materials used, labor or service  
14 costs, interest paid, losses, or any other expense;

15 (c) The cost of transportation of the property;

16 (d) The amount of any excise or property tax levied  
17 against the property except as otherwise provided in the Nebraska  
18 Revenue Act of 1967; or

19 (e) The amount charged for warranties, guarantees, or  
20 maintenance agreements.

21 (2) Gross receipts of every person engaged as a public  
22 utility specified in this subsection or as a community antenna  
23 television service operator or any person involved in connecting  
24 and installing services defined in subdivision (2)(a), (b), or (d)  
25 of this section shall mean:

26 (a) In the furnishing of telephone communication service,  
27 the gross income received from furnishing local exchange telephone

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1 service and intrastate message toll telephone service. Gross  
2 receipts shall not mean (i) the gross income, including division of  
3 revenue, settlements, or carrier access charges received on or  
4 after January 1, 1984, from the sale of a telephone communication  
5 service to a communication service provider for purposes of  
6 furnishing telephone communication service or (ii) the gross income  
7 attributable to services rendered using a prepaid telephone calling  
8 arrangement. For purposes of this subdivision, a prepaid telephone  
9 calling arrangement shall mean the right to exclusively purchase  
10 telecommunications services that are paid for in advance that  
11 enables the origination of calls using an access number or  
12 authorization code, whether manually or electronically dialed;

13 (b) In the furnishing of telegraph service, the gross  
14 income received from the furnishing of intrastate telegraph  
15 services;

16 (c) In the furnishing of gas, electricity, sewer, and  
17 water service except water used for irrigation of agricultural  
18 lands and manufacturing purposes, the gross income received from  
19 the furnishing of such services upon billings or statements  
20 rendered to consumers for such utility services; and

21 (d) In the furnishing of community antenna television  
22 service, the gross income received from the furnishing of such  
23 community antenna television service as regulated under sections  
24 18-2201 to 18-2205 or 23-383 to 23-388.

25 Gross receipts shall also mean gross income received from  
26 the provision, installation, construction, servicing, or removal of  
27 property used in conjunction with the furnishing, installing, or

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1 connecting of any public utility services specified in subdivision  
2 (2)(a) or (b) of this section or community antenna television  
3 service specified in subdivision (2)(d) of this section. ~~Gross~~  
4 ~~receipts shall not mean gross income received from telephone~~  
5 ~~directory advertising.~~

6 (3) Gross receipts of every person engaged in selling,  
7 leasing, or otherwise providing intellectual or entertainment  
8 property shall mean:

9 (a) In the furnishing of computer software, the gross  
10 income received, including the charges for coding, punching, or  
11 otherwise producing computer software and the charges for the  
12 tapes, disks, punched cards, or other properties furnished by the  
13 seller; ~~Gross receipts shall not mean the amount charged for~~  
14 ~~training customers in the use of computer software if such amount~~  
15 ~~is separately stated and such separate statement is not used as a~~  
16 ~~means of avoiding imposition of the tax upon the actual sales price~~  
17 ~~of the computer software; and~~

18 (b) In the furnishing of videotapes, movie film,  
19 satellite programming, satellite programming service, and satellite  
20 television signal descrambling or decoding devices, the gross  
21 income received from the license, franchise, or other method  
22 establishing the charge except the gross income received from  
23 videotape and film rentals, satellite programming, and satellite  
24 programming service when the sales tax or the admission tax is  
25 charged under the Nebraska Revenue Act of 1967 and except as  
26 provided in section 77-2704.39.

27 (4) Commencing July 1, 2002, gross receipts for providing

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1 services shall mean the gross income received for the following  
2 services:

3 (a) Construction services not provided in connection with  
4 the original construction of a building or facility;

5 (b) Services of special trade contractors not provided in  
6 connection with the original construction of a building or  
7 facility;

8 (c) Camps and recreational vehicle parks;

9 (d) Automotive repair, services, and parking;

10 (e) Repair services;

11 (f) Animal specialty services, except veterinary;

12 (g) Detective, guard, and armored car services;

13 (h) Employment and temporary help agencies;

14 (i) Cleaning and maintenance services to buildings;

15 (j) Disinfecting and pest control services; and

16 (k) Advertising agency services.

17 (5) Gross receipts shall not include any of the  
18 following:

19 (a) Cash discounts allowed and taken on sales;

20 (b)(i) Before January 1, 1997, the amount of any rebate  
21 granted by a motor vehicle manufacturer or dealer at the time of  
22 sale of the motor vehicle, which rebate functions as a discount  
23 from the sales price of the motor vehicle, and

24 (ii) On and after January 1, 1997, the amount of any  
25 rebate granted by a motor vehicle or motorboat manufacturer or  
26 dealer at the time of sale of the motor vehicle or motorboat, which  
27 rebate functions as a discount from the sales price of the motor

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1 ~~vehicle or motorboat,~~

2 ~~(e)~~ Sales price of property returned by customers when  
3 the full sales price is refunded either in cash or credit;

4 ~~(d)~~ (b) The amount charged for finance charges, carrying  
5 charges, service charges, or interest from credit extended on sales  
6 of property under contracts providing for deferred payments of the  
7 purchase price if such charges are not used as a means of avoiding  
8 imposition of the tax upon the actual sales price of the property;

9 ~~(e)~~ The value of property taken by a seller in trade as  
10 all or a part of the consideration for a sale of property of any  
11 kind or nature,

12 ~~(f)(i)~~ Before January 1, 1997, the value of a motor  
13 vehicle taken by any person in trade as all or a part of the  
14 consideration for a sale of another motor vehicle, and

15 ~~(ii)~~ On and after January 1, 1997, the

16 (c) The value of a motor vehicle or motorboat taken by  
17 any person in trade as all or a part of the consideration for a  
18 sale of another motor vehicle or motorboat;

19 ~~(g)~~ (d) Receipts from conditional sale contracts,  
20 installment sale contracts, rentals, and leases executed in writing  
21 prior to June 1, 1967, and with delivery of the property prior to  
22 June 1, 1967, if such conditional sale contracts, installment sale  
23 contracts, rentals, or leases are for a fixed price and are not  
24 subject to negotiation or alteration; or

25 ~~(h)~~ ~~Except~~ (e) Until July 1, 2002, except as provided in  
26 subsection (2) of this section, the amount charged for labor or  
27 services rendered in installing or applying the property sold if

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1 such amount is separately stated and such separate statement is not  
2 used as a means of avoiding imposition of the tax upon the actual  
3 sales price of the property. On and after July 1, 2002, except as  
4 provided in subsection (2) of this section, the amount charged for  
5 labor or services rendered in installing or applying the property  
6 sold if such amount is separately stated and such separate  
7 statement is not used as a means of avoiding imposition of the tax  
8 upon the actual sales price of the property and the labor services  
9 rendered are not services defined in subsection (4) of this  
10 section.

11 Sec. 3. Section 77-2702.13, Revised Statutes Supplement,  
12 2000, is amended to read:

13 77-2702.13. (1) Retail sale or sale at retail shall  
14 mean:

15 (a) A sale of property for any purpose other than for  
16 resale in the regular course of business;

17 (b) A sale of property to an advertising agency which  
18 purchases the property as an agent for a disclosed or undisclosed  
19 principal. The advertising agency is and remains liable for the  
20 sales and use tax on the purchase the same as if the principal had  
21 made the purchase directly;

22 (c) The delivery in this state of property by an owner or  
23 former owner thereof or by a factor or agent of such owner, former  
24 owner, or factor, if the delivery is to a customer or person for  
25 redelivery to a consumer, pursuant to a retail sale made by a  
26 retailer not engaged in business in this state. The person making  
27 the delivery in such cases shall include the delivery person's

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1 selling price of the property in his or her gross receipts;

2 (d) The sale of admissions which shall mean the right or  
3 privilege to have access to or to use a place or location. When an  
4 admission to an activity is combined with the solicitation of a  
5 contribution, the portion or the amount charged representing the  
6 fair market price of the admission shall be considered a retail  
7 sale subject to the tax imposed by section 77-2703. The  
8 organization conducting the activity shall determine the amount  
9 properly attributable to the purchase of the privilege, benefit, or  
10 other consideration in advance, and such amount shall be clearly  
11 indicated on any ticket, receipt, or other evidence issued in  
12 connection with the payment. Admissions shall not include (i) fees  
13 charged by elementary or secondary schools, public or private, (ii)  
14 fees charged by school districts, student organizations, or  
15 parent-teacher associations pursuant to an agreement with the  
16 proper school authorities in an elementary or secondary school,  
17 public or private, during the regular school day or at an approved  
18 function of any such school, or (iii) fees charged by ballot  
19 question committees, candidate committees, independent committees,  
20 and political party committees as defined in the Nebraska Political  
21 Accountability and Disclosure Act;

22 (e) A sale of live plants incorporated into real estate  
23 except when such incorporation is incidental to the transfer of an  
24 improvement upon real estate or the real estate;

25 (f) A sale of any property annexed to real estate by a  
26 person electing to be taxed as a retailer pursuant to subdivision  
27 (1) of section 77-2702.05 except when such annexation is incidental

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1 to the transfer of an improvement upon real estate or the real  
2 estate; ~~and~~

3 (g) The sale of prepaid telephone calling arrangements  
4 and the recharge of prepaid telephone calling arrangements. If the  
5 sale or recharge of a prepaid telephone calling arrangement does  
6 not take place at the vendor's place of business, the sale or  
7 recharge shall be conclusively determined to take place at the  
8 customer's shipping address or, if there is no item shipped, at the  
9 customer's billing address. For purposes of this subdivision, a  
10 prepaid telephone calling arrangement shall mean the right to  
11 exclusively purchase telecommunications services that are paid for  
12 in advance that enables the origination of calls using an access  
13 number or authorization code, whether manually or electronically  
14 dialed; and

15 (h) Commencing July 1, 2002, providing a service defined  
16 in subsection (4) of section 77-2702.07.

17 (2) Retail sale or sale at retail shall not mean:

18 (a) The sale of:

19 ~~(i) Property~~ property which will enter into and become an  
20 ingredient or component part of property manufactured, processed,  
21 or fabricated for ultimate sale at retail; ~~or~~

22 ~~(ii) Refractory materials, lime, synthetic slag, mill~~  
23 ~~rolls, and guides for use in manufacturing of steel or cement;~~

24 (b) The sale of:

25 (i) Any form of animal life of a kind the products of  
26 which ordinarily constitute food for human consumption. Animal  
27 life shall include live poultry or livestock on the hoof when sales

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1 are made by the grower, producer, feeder, or any person engaged in  
2 the business of bartering, buying, or selling live poultry or  
3 livestock on the hoof;

4 (ii) Seeds and annual plants, the products of which  
5 ordinarily constitute food for human consumption and which seeds  
6 and annual plants are sold to commercial producers of such  
7 products, and seed legumes, seed grasses, and seed grains when sold  
8 to be used exclusively for agricultural purposes;

9 (iii) Agricultural chemicals, adjuvants, surfactants,  
10 bonding agents, clays, oils, and any other additives or  
11 compatibility agents for use in commercial agriculture and applied  
12 to land or crops and sold in any tax period that has not been  
13 closed by the applicable statute of limitations. Agricultural  
14 chemicals shall not mean chemicals, adjuvants, surfactants, bonding  
15 agents, clays, oils, and any other additives or compatibility  
16 agents applied to harvested grains stored in commercial elevators;  
17 or

18 (iv) Oxygen for use in aquaculture as defined in section  
19 2-3804.01;

20 (c) The sale of:

21 (i) Nonreturnable containers when sold without contents  
22 to persons who place contents in the container and sell the  
23 contents together with the container;

24 (ii) Containers when sold with contents if the sales  
25 price of the contents is not required to be included in the measure  
26 of the taxes imposed by the Nebraska Revenue Act of 1967; and

27 (iii) Returnable containers when sold with contents in

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1 connection with a retail sale of the contents or when resold for  
2 refilling.

3 The term returnable containers shall mean containers of a  
4 kind customarily returned by the buyer of the contents for reuse.  
5 All other containers are nonreturnable containers;

6 (d) The sale of property the transfer of which to the  
7 consumer constitutes an occasional sale or the transfer of which to  
8 the consumer is made by way of an occasional sale;

9 (e) The sale of property the sale, purchase, or use of  
10 which has been taxed to that taxpayer in another state, territory,  
11 or possession of the United States of America when such other  
12 state, territory, or possession grants a reciprocal exclusion or an  
13 exemption to similar transactions in this state;

14 (f) The purchase in this state or the purchase outside  
15 this state, with title passing in this state, of materials and  
16 replacement parts used as or used directly in the repair and  
17 maintenance or manufacture of or provision of repair services as  
18 defined in subsection (4) of section 77-2702.07 on railroad rolling  
19 stock, whether owned by a railroad or by any person, whether a  
20 common or contract carrier or otherwise, motor vehicles,  
21 watercraft, or aircraft engaged as common or contract carriers or  
22 the purchase in such manner of motor vehicles, watercraft, or  
23 aircraft to be used as common or contract carriers. All purchasers  
24 seeking to take advantage of the exemption shall apply to the Tax  
25 Commissioner for a common or contract carrier exemption. All  
26 common or contract carrier exemption certificates shall expire on  
27 October 31, 1986, and on October 31 every three years thereafter.

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1 All persons seeking to continue to take advantage of the common or  
2 contract carrier exemption shall apply for a new certificate at the  
3 expiration of the prior certificate. The Tax Commissioner shall  
4 notify such exemption certificate holders at least sixty days prior  
5 to the expiration date of such certificate that their certificate  
6 will expire and be null and void as of such date;

7 (g) The sale of railroad rolling stock whether purchased  
8 by a railroad or by any other person; or

9 (h) The sale of property annexed to real estate.

10 Sec. 4. Section 77-2702.14, Revised Statutes Supplement,  
11 2000, is amended to read:

12 77-2702.14. (1) Retailer shall mean:

13 (a) Any seller engaged in the business of making sales  
14 subject to tax under section 77-2703 or in the business of making  
15 sales subject to tax under section 77-2703 at auction of property  
16 owned by the person or others. Retailer shall mean, in the case of  
17 sales at auction when the person collecting the proceeds of the  
18 auction is not the auctioneer or an agent or employee of the  
19 auctioneer, the person collecting the proceeds of the auction,  
20 other than the owner of the property, together with his or her  
21 principal, if any, and retailer shall not include the auctioneer in  
22 such case;

23 (b) Every person who has elected to be considered a  
24 retailer pursuant to subdivision (1) of section 77-2702.05; ~~and~~

25 (c) Every person operating, organizing, or promoting a  
26 flea market, craft show, fair, or similar event; and

27 (d) Commencing July 1, 2002, every person engaged in the

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1 business of providing any service defined in subsection (4) of  
2 section 77-2702.07.

3 (2) Retailer shall not mean:

4 (a) Any person who leases or rents ~~films when an~~  
5 ~~admission tax is charged under the Nebraska Revenue Act of 1967 or~~  
6 railroad rolling stock interchanged pursuant to the provisions of  
7 the federal Interstate Commerce Act;

8 (b) Any person engaged in the business of furnishing  
9 rooms in a facility licensed under the Health Care Facility  
10 Licensure Act in which rooms, lodgings, or accommodations are  
11 regularly furnished for a consideration or a facility operated by  
12 an educational institution established under Chapter 79 or Chapter  
13 85 in which rooms are regularly used to house students for a  
14 consideration for periods in excess of thirty days; or

15 (c) Any person making sales at a flea market, craft show,  
16 fair, or similar event who does not have a sales tax permit and who  
17 has arranged to pay sales taxes collected to the person operating,  
18 organizing, or promoting such event.

19 Sec. 5. Section 77-2702.17, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 77-2702.17. (1) Sales price shall mean the total amount  
22 for which property is sold valued in money whether paid in money or  
23 otherwise, without any deduction on account of:

24 (a) The cost of the property sold;

25 (b) The cost of material used, labor or service cost,  
26 interest paid, losses, or any other expenses;

27 (c) The cost of transportation of the property. The

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1 total amount for which property is sold shall include any services  
2 which are a part of the sale and any amount for which credit is  
3 given to the purchaser by the seller;

4 (d) The cost of computer software contained on the  
5 property; or

6 (e) The cost of any license, franchise, or lease for the  
7 use of computer software or entertainment properties such as  
8 videotapes or movie films.

9 (2) Sales price shall not mean any of the following:

10 (a) ~~Cash discounts allowed and taken on sales;~~

11 ~~(b) The amount of any rebate granted by a motor vehicle~~  
12 ~~or motorboat manufacturer or dealer at the time of sale of the~~  
13 ~~motor vehicle or motorboat, which rebate functions as a discount~~  
14 ~~from the sales price of the motor vehicle or motorboat;~~

15 ~~(c) The amount refunded for property returned by~~  
16 ~~customers when all or part of the amount charged therefor is~~  
17 ~~refunded either in cash or credit;~~

18 ~~(d)~~ (b) The amount charged for finance charges, carrying  
19 charges, service charges, or interest from credit extended on sales  
20 of property under contracts providing for deferred payments of the  
21 purchase price if such charges are not used as a means of avoiding  
22 imposition of the tax upon the actual sales price of the property;

23 ~~(e) The value of property taken by a seller in trade as~~  
24 ~~all or a part of the consideration for a sale of property of any~~  
25 ~~kind or nature;~~

26 ~~(f)~~ (c) The value of a motor vehicle or motorboat taken  
27 by any person in trade as all or part of the consideration for a

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1 sale of another motor vehicle or motorboat;

2 ~~(g)~~ (d) The amount charged for labor or services rendered  
3 in annexing property to real estate; or

4 ~~(h)~~ The (e) Until July 1, 2002, the amount charged for  
5 labor or services rendered in installing or applying the property  
6 sold if such amount is separately stated and such separate  
7 statement is not used as a means of avoiding imposition of the tax  
8 upon the actual sales price of the property. On and after July 1,  
9 2002, the amount charged for labor or services rendered in  
10 installing or applying the property sold if such amount is  
11 separately stated and such separate statement is not used as a  
12 means of avoiding imposition of the tax upon the actual sales price  
13 of the property and the labor services rendered are not services  
14 defined in subsection (4) of section 77-2702.07.

15 Sec. 6. Section 77-2703, Revised Statutes Supplement,  
16 2000, is amended to read:

17 77-2703. (1) There is hereby imposed a tax at the rate  
18 provided in section 77-2701.02 upon the gross receipts from all  
19 sales of tangible personal property sold at retail in this state,  
20 the gross receipts of every person engaged as a public utility, as  
21 a community antenna television service operator or any person  
22 involved in the connecting and installing of the services defined  
23 in subdivision (2)(a), (b), or (d) of section 77-2702.07, or as a  
24 retailer of intellectual or entertainment properties referred to in  
25 subsection (3) of section 77-2702.07, the gross receipts from the  
26 sale of admissions in this state, ~~and~~ the gross receipts from the  
27 sale of warranties, guarantees, service agreements, or maintenance

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1 agreements when the items covered are subject to tax under this  
2 section, and commencing July 1, 2002, the gross receipts from the  
3 provision of services defined in subsection (4) of section  
4 77-2702.07. For purposes of this subsection, the provision of  
5 services shall be deemed to be in this state for services provided  
6 to real estate if the real estate is located in this state and for  
7 services provided to personal property if the personal property is  
8 used in this state. When there is a sale, the tax shall be imposed  
9 at the rate in effect at the time the gross receipts are realized  
10 under the accounting basis used by the retailer to maintain his or  
11 her books and records.

12 (a) The tax imposed by this section shall be collected by  
13 the retailer from the consumer. It shall constitute a part of the  
14 purchase price and until collected shall be a debt from the  
15 consumer to the retailer and shall be recoverable at law in the  
16 same manner as other debts. The tax required to be collected by  
17 the retailer from the consumer constitutes a debt owed by the  
18 retailer to this state.

19 (b) It is unlawful for any retailer to advertise, hold  
20 out, or state to the public or to any customer, directly or  
21 indirectly, that the tax or part thereof will be assumed or  
22 absorbed by the retailer, that it will not be added to the selling,  
23 renting, or leasing price of the property sold, rented, or leased,  
24 or that, if added, it or any part thereof will be refunded. The  
25 provisions of this subdivision shall not apply to a public utility.

26 (c) The tax required to be collected by the retailer from  
27 the purchaser, unless otherwise provided by statute or by rule and

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1 regulation of the Tax Commissioner, shall be displayed separately  
2 from the list price, the price advertised in the premises, the  
3 marked price, or other price on the sales check or other proof of  
4 sales, rentals, or leases.

5 (d) For the purpose of more efficiently securing the  
6 payment, collection, and accounting for the sales tax and for the  
7 convenience of the retailer in collecting the sales tax, it shall  
8 be the duty of the Tax Commissioner to adopt and promulgate  
9 appropriate rules and regulations prescribing a schedule or  
10 schedules of the amounts to be collected from the consumer or user  
11 to effectuate the computation and collection of the tax imposed by  
12 the Nebraska Revenue Act of 1967. Such schedule or schedules shall  
13 provide that the tax shall be collected from the consumer or user  
14 uniformly on sales according to brackets based on sales prices of  
15 the item or items, except that the Tax Commissioner may authorize  
16 computation and collection of the tax uniformly on a straight  
17 percentage basis in lieu of brackets in situations involving  
18 machine or computer billing.

19 (e) The use of tokens or stamps for the purpose of  
20 collecting or enforcing the collection of the taxes imposed in the  
21 Nebraska Revenue Act of 1967 or for any other purpose in connection  
22 with such taxes is prohibited.

23 (f) For the purpose of the proper administration of the  
24 provisions of the Nebraska Revenue Act of 1967 and to prevent  
25 evasion of the retail sales tax, it shall be presumed that all  
26 gross receipts are subject to the tax until the contrary is  
27 established. The burden of proving that a sale of property is not

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1 a sale at retail is upon the person who makes the sale unless he or  
2 she takes, in good faith, from the purchaser (i) a resale  
3 certificate to the effect that the property is purchased for the  
4 purpose of reselling, leasing, or renting it, (ii) an exemption  
5 certificate pursuant to subsection (7) of section 77-2705, or (iii)  
6 a direct payment permit pursuant to sections 77-2705.01 to  
7 77-2705.03. Receipt of a resale certificate, exemption  
8 certificate, or direct payment permit, taken in good faith, shall  
9 be conclusive proof for the seller that the sale was made for  
10 resale or was exempt or that the tax will be paid directly to the  
11 state.

12 (g) In the rental or lease of automobiles, trucks,  
13 trailers, semitrailers, and truck-tractors as defined in section  
14 60-301, the tax shall be collected by the lessor on the rental or  
15 lease price, except as otherwise provided within this section:

16 (i) From all vehicles registered for operation upon the  
17 highways of this state which are rented or leased for periods of  
18 one year or more; or

19 (ii) From all vehicles delivered by the lessor within  
20 this state which are rented or leased for periods of less than one  
21 year.

22 (h) In the rental or lease of automobiles, trucks,  
23 trailers, semitrailers, and truck-tractors as defined in section  
24 60-301, for periods of one year or more, the lessor may elect not  
25 to collect and remit the sales tax on the gross receipts and  
26 instead pay a sales tax on the cost of such vehicle. If such  
27 election is made, it shall be made pursuant to the following

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1 conditions:

2 (i) Notice of the desire to make such election shall be  
3 filed with the Tax Commissioner and shall not become effective  
4 until the Tax Commissioner is satisfied that the taxpayer has  
5 complied with all conditions of this subsection and all rules and  
6 regulations of the Tax Commissioner;

7 (ii) Such election when made shall continue in force and  
8 effect for a period of not less than two years and thereafter until  
9 such time as the lessor elects to terminate the election;

10 (iii) When such election is made, it shall apply to all  
11 vehicles of the lessor rented or leased for periods of one year or  
12 more except vehicles to be leased to common or contract carriers  
13 who provide to the lessor a valid common or contract carrier  
14 exemption certificate. If the lessor rents or leases other  
15 vehicles for periods of less than one year, such lessor shall  
16 maintain his or her books and records and his or her accounting  
17 procedure as the Tax Commissioner prescribes; and

18 (iv) The Tax Commissioner by rule and regulation shall  
19 prescribe the contents and form of the notice of election, a  
20 procedure for the determination of the tax base of vehicles which  
21 are under an existing lease at the time such election becomes  
22 effective, the method and manner for terminating such election, and  
23 such other rules and regulations as may be necessary for the proper  
24 administration of this subdivision.

25 (i) The tax imposed by this section on the sales of motor  
26 vehicles, trailers, and semitrailers as defined in section 60-301  
27 shall be the liability of the purchaser and, with the exception of

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1 motor vehicles, trailers, and semitrailers registered pursuant to  
2 section 60-305.09, the tax shall be collected by the county  
3 treasurer or designated county official as provided in section  
4 60-302 at the time the purchaser makes application for the  
5 registration of the motor vehicle, trailer, or semitrailer for  
6 operation upon the highways of this state. The tax imposed by this  
7 section on motor vehicles, trailers, and semitrailers registered  
8 pursuant to section 60-305.09 shall be collected by the Department  
9 of Motor Vehicles at the time the purchaser makes application for  
10 the registration of the motor vehicle, trailer, or semitrailer for  
11 operation upon the highways of this state. At the time of the sale  
12 of any motor vehicle, trailer, or semitrailer, the seller shall (i)  
13 state on the sales invoice the dollar amount of the tax imposed  
14 under this section and (ii) furnish to the purchaser a certified  
15 statement of the transaction, in such form as the Tax Commissioner  
16 prescribes, setting forth as a minimum the total sales price, the  
17 allowance for any trade-in, and the difference between the two.  
18 The sales tax due shall be computed on the difference between the  
19 total sales price and the allowance for any trade-in as disclosed  
20 by such certified statement. Any seller who willfully understates  
21 the amount upon which the sales tax is due shall be subject to a  
22 penalty of one thousand dollars. A copy of such certified  
23 statement shall also be furnished to the Tax Commissioner. Any  
24 seller who fails or refuses to furnish such certified statement  
25 shall be guilty of a misdemeanor and shall, upon conviction  
26 thereof, be punished by a fine of not less than twenty-five dollars  
27 nor more than one hundred dollars. If the seller fails to state on

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1 the sales invoice the dollar amount of the tax due, the purchaser  
2 shall have the right and authority to rescind any agreement for  
3 purchase and to declare the purchase null and void. If the  
4 purchaser retains such motor vehicle, trailer, or semitrailer in  
5 this state and does not register it for operation on the highways  
6 of this state within thirty days of the purchase thereof, the tax  
7 imposed by this section shall immediately thereafter be paid by the  
8 purchaser to the county treasurer, the designated county official,  
9 or the Department of Motor Vehicles. If the tax is not paid on or  
10 before the thirtieth day after its purchase, the county treasurer,  
11 designated county official, or Department of Motor Vehicles shall  
12 also collect from the purchaser interest from the thirtieth day  
13 through the date of payment and sales tax penalties as provided in  
14 the Nebraska Revenue Act of 1967. The county treasurer, designated  
15 county official, or Department of Motor Vehicles shall report and  
16 remit the tax so collected to the Tax Commissioner by the fifteenth  
17 day of the following month. The county treasurer or designated  
18 county official shall deduct and withhold for the use of the county  
19 general fund, from all amounts required to be collected under this  
20 subsection, the collection fee permitted to be deducted by any  
21 retailer collecting the sales tax. The Department of Motor  
22 Vehicles shall deduct, withhold, and deposit in the Motor Carrier  
23 Division Cash Fund the collection fee permitted to be deducted by  
24 any retailer collecting the sales tax. The collection fee shall be  
25 forfeited if the county treasurer, designated county official, or  
26 Department of Motor Vehicles violates any rule or regulation  
27 pertaining to the collection of the use tax.

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1                   (j)(i) The tax imposed by this section on the sale of a  
2 motorboat as defined in section 37-1204 shall be the liability of  
3 the purchaser. The tax shall be collected by the county treasurer  
4 or designated county official at the time the purchaser makes  
5 application for the registration of the motorboat. At the time of  
6 the sale of a motorboat, the seller shall (A) state on the sales  
7 invoice the dollar amount of the tax imposed under this section and  
8 (B) furnish to the purchaser a certified statement of the  
9 transaction, in such form as the Tax Commissioner prescribes,  
10 setting forth as a minimum the total sales price, the allowance for  
11 any trade-in, and the difference between the two. The sales tax  
12 due shall be computed on the difference between the total sales  
13 price and the allowance for any trade-in as disclosed by such  
14 certified statement. Any seller who willfully understates the  
15 amount upon which the sales tax is due shall be subject to a  
16 penalty of one thousand dollars. A copy of such certified  
17 statement shall also be furnished to the Tax Commissioner. Any  
18 seller who fails or refuses to furnish such certified statement  
19 shall be guilty of a misdemeanor and shall, upon conviction  
20 thereof, be punished by a fine of not less than twenty-five dollars  
21 nor more than one hundred dollars. If the seller fails to state on  
22 the sales invoice the dollar amount of the tax due, the purchaser  
23 shall have the right and authority to rescind any agreement for  
24 purchase and to declare the purchase null and void. If the  
25 purchaser retains such motorboat in this state and does not  
26 register it within thirty days of the purchase thereof, the tax  
27 imposed by this section shall immediately thereafter be paid by the

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1 purchaser to the county treasurer or designated county official.  
2 If the tax is not paid on or before the thirtieth day after its  
3 purchase, the county treasurer or designated county official shall  
4 also collect from the purchaser interest from the thirtieth day  
5 through the date of payment and sales tax penalties as provided in  
6 the Nebraska Revenue Act of 1967. The county treasurer or  
7 designated county official shall report and remit the tax so  
8 collected to the Tax Commissioner by the fifteenth day of the  
9 following month. The county treasurer or designated county  
10 official shall deduct and withhold for the use of the county  
11 general fund, from all amounts required to be collected under this  
12 subsection, the collection fee permitted to be deducted by any  
13 retailer collecting the sales tax. The collection fee shall be  
14 forfeited if the county treasurer or designated county official  
15 violates any rule or regulation pertaining to the collection of the  
16 use tax.

17 (ii) In the rental or lease of motorboats, the tax shall  
18 be collected by the lessor on the rental or lease price, except as  
19 otherwise provided within this section:

20 (A) From all motorboats registered for operation within  
21 this state which are rented or leased for periods of one year or  
22 more; or

23 (B) From all motorboats delivered by the lessor within  
24 this state which are rented or leased for periods of less than one  
25 year.

26 (iii) Subdivisions (1)(j)(i) and (ii) of this section  
27 become operative January 1, 1997.

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1           (k) The Tax Commissioner shall adopt and promulgate  
2 necessary rules and regulations for determining the amount subject  
3 to the taxes imposed by this section so as to insure that the full  
4 amount of any applicable tax is paid in cases in which a sale is  
5 made of which a part is subject to the taxes imposed by this  
6 section and a part of which is not so subject and a separate  
7 accounting is not practical or economical.

8           (2) A use tax is hereby imposed on the storage, use, or  
9 other consumption in this state of property purchased, leased, or  
10 rented from any retailer and on any transaction the gross receipts  
11 of which are subject to tax under subsection (1) of this section on  
12 or after June 1, 1967, for storage, use, or other consumption in  
13 this state at the rate set as provided in subsection (1) of this  
14 section on the sales price of the property or, in the case of  
15 leases or rentals, of the lease or rental prices.

16           (a) Every person storing, using, or otherwise consuming  
17 in this state property purchased from a retailer or leased or  
18 rented from another person for such purpose shall be liable for the  
19 use tax at the rate in effect when his or her liability for the use  
20 tax becomes certain under the accounting basis used to maintain his  
21 or her books and records. His or her liability shall not be  
22 extinguished until the use tax has been paid to this state, except  
23 that a receipt from a retailer engaged in business in this state or  
24 from a retailer who is authorized by the Tax Commissioner, under  
25 such rules and regulations as he or she may prescribe, to collect  
26 the sales tax and who is, for the purposes of the Nebraska Revenue  
27 Act of 1967 relating to the sales tax, regarded as a retailer

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1 engaged in business in this state, which receipt is given to the  
2 purchaser pursuant to subdivision (b) of this subsection, shall be  
3 sufficient to relieve the purchaser from further liability for the  
4 tax to which the receipt refers.

5 (b) Every retailer engaged in business in this state and  
6 selling, leasing, or renting property for storage, use, or other  
7 consumption in this state shall, at the time of making any sale,  
8 collect any tax which may be due from the purchaser and shall give  
9 to the purchaser, upon request, a receipt therefor in the manner  
10 and form prescribed by the Tax Commissioner.

11 (c) The Tax Commissioner, in order to facilitate the  
12 proper administration of the use tax, may designate such person or  
13 persons as he or she may deem necessary to be use tax collectors  
14 and delegate to such persons such authority as is necessary to  
15 collect any use tax which is due and payable to the State of  
16 Nebraska. The Tax Commissioner may require of all persons so  
17 designated a surety bond in favor of the State of Nebraska to  
18 insure against any misappropriation of state funds so collected.  
19 The Tax Commissioner may require any tax official, city, county, or  
20 state, to collect the use tax on behalf of the state. All persons  
21 designated to or required to collect the use tax shall account for  
22 such collections in the manner prescribed by the Tax Commissioner.  
23 Nothing in this subdivision shall be so construed as to prevent the  
24 Tax Commissioner or his or her employees from collecting any use  
25 taxes due and payable to the State of Nebraska.

26 (d) All persons designated to collect the use tax and all  
27 persons required to collect the use tax shall forward the total of

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1 such collections to the Tax Commissioner at such time and in such  
2 manner as the Tax Commissioner may prescribe. Such collectors of  
3 the use tax shall deduct and withhold from the amount of taxes  
4 collected two and one-half percent of the first three thousand  
5 dollars remitted each month and one-half of one percent of all  
6 amounts in excess of three thousand dollars remitted each month as  
7 reimbursement for the cost of collecting the tax, except that for  
8 each month from October 1, 1991, to September 30, 1992, such  
9 collectors shall deduct and withhold from the amount of taxes  
10 collected three percent of the first five thousand dollars remitted  
11 each month and one percent of all amounts in excess of five  
12 thousand dollars remitted each month as reimbursement for the cost  
13 of collecting the tax and for each month from April 1, 1993, to  
14 March 31, 1994, such collectors shall deduct and withhold from the  
15 amount of taxes collected three-quarters of one percent of the  
16 first two thousand dollars remitted each month and one-quarter of  
17 one percent of all amounts in excess of two thousand dollars  
18 remitted each month as reimbursement for the cost of collecting the  
19 tax. Any such deduction shall be forfeited to the State of  
20 Nebraska if such collector violates any rule, regulation, or  
21 directive of the Tax Commissioner.

22 (e) For the purpose of the proper administration of the  
23 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
24 it shall be presumed that property sold, leased, or rented by any  
25 person for delivery in this state is sold, leased, or rented for  
26 storage, use, or other consumption in this state until the contrary  
27 is established. The burden of proving the contrary is upon the

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1 person who purchases, leases, or rents the property.

2 (f) It shall be further presumed, in the absence of  
3 evidence to the contrary, that property shipped or brought to this  
4 state by the purchaser after June 1, 1967, was purchased from a  
5 retailer on or after that date for storage, use, or other  
6 consumption in this state.

7 (g) (i) Except as provided in subdivisions (g) (ii) through  
8 (g) (v) of this subsection, when a person purchases property in  
9 another state, the Commonwealth of Puerto Rico, any territory or  
10 possession of the United States, or any foreign country with the  
11 intent of using such property in such other state, commonwealth,  
12 territory, possession, or country and such property is actually  
13 used in the other state, commonwealth, territory, possession, or  
14 country for its intended purpose, the property shall not be subject  
15 to tax in this state.

16 (ii) Subdivision (g) (i) of this subsection shall only  
17 apply to a motor vehicle, trailer, or semitrailer as defined in  
18 section 60-301 when it is licensed for operation on the highways of  
19 the other state, commonwealth, territory, possession, or country  
20 prior to being brought into this state. Licensed for operation on  
21 the highways does not include any temporary registration,  
22 licensing, or in transit procedure that allows nonresidents to  
23 operate the motor vehicle, trailer, or semitrailer on the highways  
24 of the other state, commonwealth, territory, possession, or country  
25 for a limited time with the intent to remove the motor vehicle from  
26 the other state, commonwealth, territory, possession, or country.

27 (iii) Subdivision (g) (i) of this subsection shall not

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1    apply to an aircraft which is brought into this state within one  
2    year of purchase and (A) is regularly based within this state or  
3    (B) more than one-half of the aircraft's operating hours are within  
4    this state.

5            For purposes of subdivision (g) (iii) of this subsection,  
6    operation of the aircraft for the purpose of maintenance, repair,  
7    or fabrication with subsequent removal from this state upon  
8    completion of such maintenance, repair, or fabrication shall not be  
9    considered operating hours.

10           (iv) (A) Subdivision (g) (i) of this subsection shall only  
11    apply to a motorboat as defined in section 37-1204 when it is  
12    registered for operation in the other state, commonwealth,  
13    territory, possession, or country prior to being brought into this  
14    state.

15           (B) Subdivision (g) (iv) (A) of this subsection becomes  
16    operative January 1, 1997.

17           (v) Subdivision (g) (i) of this subsection shall not apply  
18    to any property that is manufactured, processed, or fabricated in  
19    another state and that is not used for its intended purpose in the  
20    other state after its manufacture, processing, or fabrication.

21           Sec. 7. Section 77-2704.07, Reissue Revised Statutes of  
22    Nebraska, is amended to read:

23           77-2704.07. Sales and use taxes shall not be imposed on  
24    the gross receipts from the sale, lease, or rental of and the  
25    storage, use, or other consumption in this state of ~~(1)~~ any  
26    newspaper regularly issued at average intervals not exceeding one  
27    week if such newspaper contains matters of general interest and

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1 reports of current events\_ or (2) any newspaper advertising  
2 supplement distributed with any newspaper regardless of whether or  
3 not the retailer takes possession of the supplement from the  
4 printer before delivery of the supplement is made to the newspaper.

5 Sec. 8. Section 77-2704.13, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 77-2704.13. Sales and use taxes shall not be imposed on  
8 the gross receipts from the sale, lease, or rental of and the  
9 storage, use, or other consumption in this state of:

10 (1) Sales and purchases of electricity, coal, gas, fuel  
11 oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear  
12 fuel, and butane when more than fifty percent of the amount  
13 purchased is for use directly in irrigation or farming; and

14 (2) Sales and purchases of such energy sources or fuels  
15 made before April 1, 1993, or after March 31, 1994, when more than  
16 fifty percent of the amount purchased is for use directly in  
17 processing, manufacturing, or refining, in the generation of  
18 electricity, or by any hospital. The state tax paid on purchases  
19 of such energy sources or fuels during the period beginning April  
20 1, 1993, and ending March 31, 1994, shall not exceed one hundred  
21 thousand dollars for any one location when more than fifty percent  
22 of the amount purchased is for use directly in processing,  
23 manufacturing, or refining or by any hospital. All purchases of  
24 such energy sources or fuels for use in the generation of  
25 electricity during the period beginning April 1, 1993, and ending  
26 March 31, 1994, shall be taxable. Any taxpayer who has paid the  
27 limit of state tax on such energy sources or fuels at one location

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1 ~~shall be exempt on all other qualifying purchases at such location.~~  
2 ~~Such taxpayer shall be entitled to a refund of any amount of state~~  
3 ~~or local option tax paid on an energy source or fuel exempt under~~  
4 ~~this subdivision. A refund shall be made pursuant to section~~  
5 ~~77-2708.~~

6           Sec. 9. Section 77-2704.24, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           77-2704.24. Sales and use taxes shall not be imposed on  
9 the gross receipts from the sale, lease, or rental of and the  
10 storage, use, or other consumption in this state of food or food  
11 products for human consumption which are eligible for purchase with  
12 food coupons issued by the United States Department of Agriculture  
13 pursuant to regulations in effect on October 1, 1983, regardless of  
14 whether the retailer from which the foods are purchased is  
15 participating in the food stamp program.

16           For purposes of this section:

17           (1) Candy means a preparation of sugar, honey, or other  
18 natural or artificial sweeteners in combination with chocolate,  
19 fruits, nuts, or other ingredients or flavorings in the form of  
20 bars, drops, or pieces that requires no refrigeration. Candy does  
21 not include any preparation containing flour;

22           (2) Food does ~~not~~ ~~shall~~ not include (a) meals or other  
23 food prepared for immediate consumption on or off the premises of  
24 the retailer, (b) ~~and shall not include foods~~ sold through vending  
25 machines, and (c) candy, gum, soft drinks, and bottled water; and

26           (3) Soft drinks means nonalcoholic beverages that contain  
27 natural or artificial sweeteners. Soft drinks does not include

1 beverages that contain:

2 (a) Milk or milk products;

3 (b) Soy, rice, or similar milk substitutes; or

4 (c) Greater than fifty percent of vegetable or fruit  
5 juice by volume.

6 Sec. 10. Section 77-2704.26, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 77-2704.26. Sales and use taxes shall not be imposed on  
9 the gross receipts from the sale, lease, or rental of and the  
10 storage, use, or other consumption in this state of an aircraft  
11 delivered in this state to an individual who is a resident of  
12 another state or any other person who has a business location in  
13 another state when the aircraft is not to be registered or based in  
14 this state and it will not remain in this state more than ten days.  
15 Sales and use taxes shall not be imposed on the gross receipts from  
16 a service listed in subsection (4) of section 77-2702.07 that is  
17 rendered to an aircraft brought into this state by an individual  
18 who is a resident of another state or any other person who has a  
19 business location in another state when the aircraft is not to be  
20 registered or based in this state and it will not remain in this  
21 state more than ten days after the service is completed.

22 Sec. 13. If any section in this act or any part of any  
23 section is declared invalid or unconstitutional, the declaration  
24 shall not affect the validity or constitutionality of the remaining  
25 portions.

26 Sec. 17. The following sections are outright repealed:  
27 Sections 77-2704.04, 77-2704.22, and 77-2704.38, Reissue Revised

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1 Statutes of Nebraska.".

2                   2.     Correct the repealer and operative date section so  
3 that the sections added by this amendment become operative on July  
4 1, 2002.

5                   3.     Renumber the remaining sections accordingly.